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March 26, 2008

Mr. Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 14th St. N.W.
Washington, D.C. 20570-0001

Via Fed-Ex Overnight Delivery

RE: Proposed Rule for Joint Petitions for Certification

Dear Mr. Heltzer:

Pursuant to the National Labor Relations Board's Notice for Proposed Rule concerning "Joint Petitions for Certification consenting to an Election", I write to strenuously oppose such a rule. My opposition is based upon my experience as an attorney representing employers in NLRB matters for five years, as an attorney with the NLRB for 20 years, and as an adjunct law professor at William H. Bowen UALR School of Law, where I taught Labor Law, for 12 years.

According to the proposed rule, a union and employer could file jointly a petition for certification consenting to an election. Under this rule, no showing of interest would be required. Such a petition would provide for an election date within 28 days of the filing of the petition. Furthermore, this proposal provides for the Regional Director to be the final arbiter of all election and post-election matters, such as objections and challenges.

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I urge the Board to reject the proposed rule for two principal reasons: (1) it is contrary to the purpose of the National Labor Relations Act; and (2) it is contrary to the language of the Act.

The Act's purpose is to protect the rights of employees. Unfortunately, the proposed rule ignores this principle. Instead, it appears to attempt to further the interests of some labor organizations and employers, without regard to employees' rights. Furthermore, the proposed rule is anti-employee because they have to endure a union organizing campaign even though there may not be any employees in support of such. It is undemocratic to allow an election to be scheduled which will potentially have the greatest impact on one group, the employees, who are not the impetus of whether there even should be an election.

The proposed rule contradicts the language of the Act. Section 9(c)(1)(A) of the Act states in pertinent part:

Wherever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board -

by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a) (*emphasis added*).

Section 101.17 of the Board's Rules and Regulations requires the petitioner in RC and RD petitions to supply "evidence of representation", which the Board has defined in Section

101.18 of the Board's Rules and Regulations as meaning "at least 30 percent of the employees" unless there are "special factors." The proposed rule ignores the explicit language requiring "a substantial number of employees" to be supportive of the petition by allowing an employer and a labor organization to agree upon an election without any evidence that a single employee desires an election.

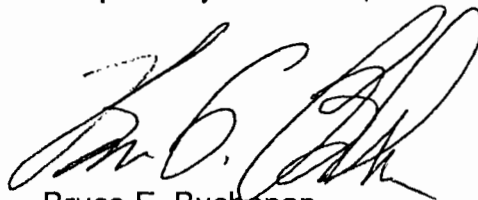
Moreover, why should the Board hold an election when the parties have not demonstrated any evidence that the employees desire such an election? In the Board's Rules and Regulations, the Board stated an election without 30 percent or more showing of interest "serves no purpose." The Board's own Casehandling Manual - Representation Proceedings, Section 11020, states a showing of interest "serves a useful purpose under the statute - to gauge whether there is sufficient employee interest to warrant the expenditure of the Agency's time, effort, and resources." This proposed rule ignores these points.

It is anticipated some commentators may argue "Joint Petitions for Certification Consenting to an Election" are an alternative to the parties agreeing to voluntary recognition. However, in that situation, the union has presented evidence, usually through union authorization cards, to the employer that a majority of the employees desire union representation. Although union authorization cards are an imperfect method to reflect employees' wishes toward unionization, at least it is some evidence of employee support. On the other hand, the proposed rule provides for no employee participation before an election is held; rather, it only takes the employer's and union's consent for an election.

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Although there are certainly situations where rulemaking would be of assistance in the effectuation of the Act, this proposed rule is not one of those situations. I urge the Board to reject this proposed rule.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. E. Buchanan", written in a cursive style.

Bruce E. Buchanan

BEB/kbs